

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA



. In the Matter of the Appeal of)
JULIA C. WASHBURN)

Appearances:

For Appellant: C. V. Caldwell, Attorney at Law

For Respondent: W. M. Walsh, Assistant Franchise Tax
Commissioner; James J. Arditto,
Franchise Tax Counsel

W P I N I O N

This appeal is made pursuant to Section 18593 of the Revenue and Taxation Code (formerly Section 19 of the Personal Income Tax Act) from the action of the Franchise Tax Commissioner in overruling the protest of Julia C. Washburn to a proposed assessment of additional personal income tax in the amount of \$2,400.91 for the year ended December 31, 1939.

Appellant filed a personal income tax return for the year 1939 but did not report therein any taxable income although her husband, prior to the time of an interlocutory decree of divorce on December 13, 1939, had received considerable income from sales of property acquired during the marriage. The Commissioner determined that the property was community property and levied his proposed assessment on the basis that one-half the income derived from the sale thereof was that of Appellant. She contends, however, that the property and the income therefrom were the husband's separate property.

At the time of Appellant's marriage in 1933, neither she nor her husband owned any property. They acquired a home in 1925, and while the facts respecting its purchase are far from clear, it appears that at least a part of the purchase price was paid by the husband's parents. Appellant was able to testify only that either the property or a substantial part of the purchase price was a gift to both spouses and could not show whether the conveyance was to her husband alone or to herself and her husband.

In 1934, the husband purchased a business which later was incorporated as the 7 Up Bottling Company of Los Angeles, the property from which the income in question was obtained. This purchase was made with a loan from an unspecified loan company. The Appellant was unable to show how much was borrowed or under what circumstances the loan was made but she did testify that at the time neither she nor her husband owned any property other than the aforementioned home. Since Appellant has failed to show

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that the home was the separate property of the husband, it may be assumed that it was community property in view of the established presumption that all property acquired during marriage is community property unless shown to be separate. Estate of Duncan, 9 Cal. 2d 207. Moreover, from the Appellant's testimony it is not even clear that the title was in either spouse at the time of the loan and Appellant has not shown that the property was even considered in negotiating the loan. Actually, Appellant has not based her appeal on the theory that the loan was made on the faith of this property, but apparently claims that the money was obtained solely on the husband's individual credit.

She cites Estate of Ellis, 203 Cal. 414, and Dyment v. Nelson, 166 Cal. 38, for the proposition that money borrowed on the husband's individual credit is separate property. These cases, however, do not so hold. The loans involved in both decisions were made on the personal credit of the spouse only in the sense of personal security on the faith of separate property. Where separate property is not involved, money borrowed on the individual credit of the husband is community property. Schugler v. Broughton, 70 Cal. 283; Moulton v. Moulton, 182 Cal. 185; Mosesian v. Parker, 44 Cal. App. 2d 544.

Appellant having failed to establish that the loan was made on the faith of the husband's separate property, the proceeds thereof and the income in question which is traceable thereto must be regarded as community property. In any event, the Appellant has failed to overcome the basic presumption that income from property acquired during marriage belongs to the community (Estate of Duncan, *supra*) and the position of the Commissioner must, accordingly, be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code that the action of Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of Julia C. Washburn to a proposed assessment of additional personal income tax in the amount of \$2,400.91 for the year ended December 31, 1939, be and the same is hereby sustained.

Done at Sacramento, California, this 29th day of January, 1948, by the State Board of Equalization.

Wm. G. Bonelli, Chairman
J. H. Quinn, Member
Jerrold L. Seawell, Member

ATTEST: Dixwell L. Pierce, Secretary